

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
SEPTEMBER 28, 2009**

A regular meeting of the Greensboro Board of Adjustment was held on Monday, September 28, 2009 at 2:00 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Rick Pinto, Chair, Brian Pearce, Russ Parmele, Bill Strickland, Ryan Shell, Clinton Turner, and Cheryl Huffman. Staff present were: Loray Averett, Zoning Services Coordinator and Rawls Howard, Zoning Administrator, as well as Jim Clark, City Attorney's Office.

Chair Pinto called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Mr. Parmele moved to approve the minutes of the August 24, 2009 meeting as written, seconded by Mr. Strickland. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Rawls Howard and Loray Averett were sworn in for their testimony related to matters listed on the agenda.

OLD BUSINESS:

REHEARING

- (a) BOA-09-29: **2408 RETRIEVER LANE** Keith and Sherri Hill request a rehearing based on new evidence concerning a request for an attached screened porch which will encroach 9 feet into a 15-foot rear setback. The variance request was heard and denied at the June 22, 2009 meeting and the request for rehearing was continued from the July 27, and August 28, 2009 meetings. Section 30-9-6.9(F), Present Zoning-RS-12(CL), BS-230, Cross Street-Lake Brandt Road. **(DENIED)**

Rawls Howard stated that the applicant, through his attorney, Derek Allen, is requesting a rehearing based on new evidence concerning a request for an attached screened porch which will encroach 9 feet into a 15-foot rear setback. This case was heard at the June 22, 2009 meeting. Based on the evidence submitted at that meeting, the variance request was denied. This request was continued from the July 27, and August 24, 2009 meetings. The previous background and site information has been included in the case packet and as noted at the June 22, 2009 meeting remains the same. The City Planning Department has not received any different or new information. The RS-12(CL), Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-12 will

typically be 3.0 units per acre or less. The cluster development option allows flexibility relative to lot size and building setbacks which may use the RS-7 requirements.

Chair Pinto asked if there was anyone wishing to speak in support of the request.

Derek Allen, 2502 W. Market St., attorney representing the applicant, handed out materials to the Board. He stated that they are asking for a 9-foot variance for a 9-foot encroachment into a 15-foot setback. They wish to cover an existing porch on the back of their home which will not create any more of an encroachment. The client wishes to cover the porch due to the proximity of a retention pond and a severe mosquito problem. Mr. Allen cited a similar application from November of 2006, where a citizen asked for a 7.88-foot variance into the 15-foot setback due to similar conditions created by a retention pond. Citing the decision of the Board in the case from November 2006, the Board voted unanimously in favor of the variance. Mr. Allen then presented a Certificate of Occupancy for another neighbor encroaching 8 feet into the setback, for screening in a porch, which did not require a variance.

Mr. Allen then presented a petition of neighbors in support of the variance. He also presented the fact that a land swap, giving ownership of encroachment to the applicant, but all land rights to the home owners' association was denied by the association. He presented this as new evidence that would constitute a new hearing. He then cited a statement from Virginia Spillman, stating that under current conservation easement regulations the amount of open space in the development was more than is currently required.

Chair Pinto asked if the presented evidence shows that the previously approved variances essentially squared of the house through the screened in porches. Mr. Allen stated that some do, but several jut out from the back. The entire porch of the applicant's juts out from the backline of the house.

Chair Pinto asked if there had been any change in condition or circumstance. Mr. Allen stated that the fact the home owners' association was unwilling to do the land swap created a change in circumstance. The request was denied because the home owners' board felt the decision was not in their jurisdiction. The home owners' association does support and approve the project.

Norman Bledsoe, 3708 Regents Park Ln., Subdivision Board member, stated that the board approved the project. He also stated that he has a screened-in-porch, and without the screening, enjoying the porch is almost impossible when mosquitoes are active. The Board supports the project, but not the land ownership swap.

No one spoke in opposition to the request to rehear the case.

Mr. Parmele commented that unless something material had changed, the Board was not required to rehear a case. Mr. Pinto stated that the material change might be the fact that the home owners' association was not willing to allow a land swap. Mr. Parmele stated that there was also more information available now.

After some discussion, Mr. Strickland moved to deny the request to rehear BOA-09-29: 2408 Retriever Lane, due to no substantial change of condition, seconded by Mr. Shell. The Board voted 5-2 in favor of the motion. (Ayes: Strickland, Shell, Huffman, Turner, Parmele. Nays: Pinto, Pearce.)

NEW BUSINESS

VARIANCE

- (a) BOA-09-35: **111 MARSHALL STREET** University Heights, LLC request a variance from the maximum fence height requirement. *Violation:* A portion of an existing fence exceeds the maximum height of 4 feet by 2 feet within 15 feet of the Marshall Street right-of-way. Section 30-4-9.6(A), Present Zoning-CD-RM-26, BS-15, Cross Street-US Highway 29. **(GRANTED)**

Rawls Howard stated that the applicant has erected a fence 6 feet tall, which exceeds the maximum height of 4 feet by 2 feet within 15 feet of the Marshall Street right-of-way. The property is a corner lot. It is located at the southeastern intersection of US 29 north (ramp) and Marshall Street on zoning map block sheet 15. The lot contains approximately 1.06 acres. The applicant has recently constructed a multifamily building, which contains 24 units on this lot. A fence was recently constructed as well. The fence is constructed of wrought iron and brick columns. The fence is 6 feet tall adjacent to and within 15 feet of the Marshall Street right-of-way. Portions of the fence are adjacent to the property line and other sections are 10 feet from the property line adjacent to the Marshall Street right-of-way. In February 2009, the zoning office received a complaint that the fence was too tall and also encroached into a sight easement. On February 13, 2009, the applicant was issued a Notice of Violation for the height and sight easement encroachment. Since that date, the sight easement encroachment has been corrected by relocating the portions of the fence that were in the sight easement. Ordinance Section 30-4-9.6. Height. (A) *Residential Uses:* Except as provided in this subsection, no fence shall exceed four (4) feet in height within fifteen (15) feet of any public or private street right-of-way. On lots where the rear or side yard adjoins a major thoroughfare or a minor thoroughfare and there is no driveway access and no sight distance interference, no fence shall exceed six (6) feet in height within fifteen (15) feet of the thoroughfare right-of-way. Otherwise, no fence shall exceed seven (7) feet in height. The RM-26 Residential Multifamily District is primarily intended to accommodate multifamily uses at a density of 26.0 units per acre or less.

Chair Pinto asked if there was anyone wishing to speak in support of the request.

Barry D. Hackett, 1152 Kearns-Hackett Rd. Pleasant Garden, NC, stated that numerous student housing projects have been built in the area by his company. On this project, Mr. Hackett stated that issue of client protection, a 4-foot fence would not be adequate. A 6-foot fence, as proposed, would provide optimum security. To address the sight-view issues several columns were removed, and city staff was pleased with the changes. He stated that according to city staff, if sight-view issues were changed, then the height should be acceptable for safety reasons.

Mr. Pinto asked what parts of the fence were within the 15-foot setback requirement. Mr. Hackett stated that it was just portions of the fence along Marshall Street, and less than a third of the existing fence. He stated that they believed they were behind the setback requiring no more than a 4-foot high fence. Mr. Hackett also stated that there are several similar projects in the City with 6-foot perimeter fences.

No one spoke in opposition to the request.

Chair pinto asked if the columns could stand if the fence was required to be 4-foot high.

Ms. Averett stated that columns could be 18 in. higher than the fence, so the highest the columns could be is 5' 6".

Mr. Shell asked what the purpose of the height restriction was. Mr. Howard stated that the purpose is to allow for more safety, aesthetic quality, and a right to light for surrounding neighbors. Mr. Pearce asked if safety personnel would have access through the gates. Mr. Hackett said they would. Mr. Parmele asked if the height of the fence was included on the original building plans. Mr. Hackett stated they were not. Mr. Howard stated that as the plans went through the TRC, and other reviews, there was no fence included in the plans.

After discussion, Mr. Pearce moved to grant the variance based on the fact that there are impractical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance. If the applicant complies with the ordinance they can make no reasonable use of the property, because the property is zoned for apartments given the safety of the surrounding area. Without allowing for adequate security, the owner will have a difficult time operating the apartments on the property. The hardships of which the applicant complains are due to the unique circumstances related to the applicant's property, based on the testimony that there are security concerns in the area. The hardship results from the application of the ordinance to the property because based on the evidence, the purposes of the ordinance are aesthetic and safety. In this case the ordinance, in some ways, restricts safety. The hardship is not as a result of the applicant's own actions, because they do not control the safety of the area. The variance is in harmony with the general purpose and intent of the ordinance, and preserves the spirit by preserving safety. The granting of the variance assures the public safety and welfare, and does substantial justice for the aforementioned reasons. The motion was seconded by Mr. Turner. The Board voted unanimously, 7-0, in favor of the motion.

- (b) BOA-09-36: **3302 SUMMIT AVENUE Nidia** Lecat requests variances from the side setback requirements. The applicant is requesting to relocate the existing house on the lot. The house will contain a daycare center.

Variance #1: The structure will encroach 2.9 feet into a 10-foot interior setback adjacent to the eastern lot line. Table 30-4-6-4 **(GRANTED)**

Variance #2: The structure will also encroach 3.3 feet into a 10-foot interior setback adjacent to the western lot line. Table 30-4-6-4
Present Zoning-RM-12, BS-88, Cross Street-Spry Street. **(GRANTED)**

Rawls Howard stated that the applicant requests variances from the side setback requirements for a relocated structure on the site to encroach 2.9 feet into the eastern side lot line and 3.3 feet into the western side lot line when 10 feet is required. The lot is located on the eastern side of Summit Avenue north of Spry Street on zoning map block sheet 88. There is an existing house on the lot that is a single family dwelling which also has a home occupation daycare business. The applicant is proposing to change the principal use to a daycare center, which is a permitted use in the RM-12 zoning district. The owner is proposing to relocate the structure on the lot so the parking requirements can be provided. The proposed new location of the structure for a principal use daycare cannot meet the minimum side setback requirements, which are 10 feet on each side. The structure will encroach 2.9 feet on one side and 3.3 feet on the other side. The lot is a conforming lot in regards to lot area and lot width. In the RM-12 district a single family

dwelling is permitted and can be developed using the RS-7 zoning development standards. The lot width is 54 feet and the minimum requirement is 50 feet. The lot area is 11,000 square feet and the minimum requirement is 7,000 square feet. In the RM-12 district, when a nonresidential use change is requested the nonresidential use must meet other standards and setbacks. The minimum lot width then increases to 75 feet and the lot area increases to 15,000 square feet; However based on Section 30-4-11(B) *Single Lot of Record*: (1) When a lot has an area or width which does not conform to the dimensional requirements of the district where it is located, but such lot was of record at the time of adoption of this ordinance or any subsequent amendment which renders such lot nonconforming, then such lot may be built upon if compliance is achieved with regard to setback dimensions and other requirements, except lot area or width. The applicant is proposing to move the structure back approximately 27 feet from its original location. This will enable the applicant to provide the required parking spaces for the daycare center. The rear portion of the lot is planned to be used for play area. The RM-12 Residential Multifamily District is primarily intended to accommodate multifamily uses at a density of 12.0 units per acre or less.

Chair Pinto asked if there was anyone wishing to speak in support of the request.

Frankie Jones, 4203 Cypress Grove Ln., attorney representing applicant, stated that the application speaks for itself. However, he pointed out that the site is directly across the street from Rankin Elementary, and several churches. He also stated that this is the least possible deviation from the ordinance, by asking for a setback variance. The setbacks would be maintained, and are the existing setbacks on the property. The site contains a legal existing nonconforming structure at the time of the ordinance development. He gave a hand out to the Board indicating neighborhood support for the project.

Chair Pinto asked if the property gets narrower as it goes back, and why this variance is necessary if it does not. Mr. Jones stated that a variance was necessary because the use would be changed, to the primary use as a daycare. The use requires additional parking that can only be accommodated by moving the building back.

Ms. Averett stated the change in use would have different setback requirements even if the side setbacks of the new building site are the same as those grandfathered in. There are no rear setback issues.

Ms. Huffman asked if neighboring houses had parking in the front yard. Mr. Jones said the neighboring homes did not have front yard parking, but directly across from the proposed site there is parking for Rankin Elementary.

Mr. Jones stated that currently the primary use is as a residence, with a secondary use as a daycare. The proposed use is as only a daycare, which is allowed in the zoning, and would allow more children to be kept. There will also be additional employees.

No one spoke in opposition to the requests.

Chair Pinto asked what the reasons were for requiring a larger side setback for the use.

Mr. Howard stated the primary reason was to allow room for safety personnel, and the impacts of the nonresidential use.

Nidia Lecat, 3302 Summit Ave., stated she has been providing childcare services at the residence since 1998. The neighbors support the use. They will be moving out of the residence.

After a short discussion, Chair Pinto moved to grant Variance #1, a 2.9 ft. variance into the 10-foot interior setback adjacent to the eastern lot line. He moved that the facts as submitted by the zoning enforcement officer be incorporated into the record by reference, and that the officer be overruled and the variance granted. There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance they can make no reasonable use of the property. In support of that finding, Chair Pinto pointed out that the property is currently used as a secondary use daycare center, the attempt is to change the use to primary use daycare center, requiring a certain amount of parking. In order to accomplish this without requesting a parking variance the building can be moved back on the lot. When the house is moved it is subject to the ordinance, and encroaches 2.9 ft. to the east and 3.3 ft. to the west. Moving the house back does not create any additional encroachment. Without the variance the use of the property as a daycare could not be accomplished. The hardship, of which the applicant complains, results from the unique circumstances relating to the 54-foot width of the lot. The hardship results from the application of the ordinance to the property as outlined above. The variance is in harmony with the general purpose and intent, preserves its spirit, and welfare of the neighborhood. The granting of the variance assures public safety and welfare, and does substantial justice. The motion was seconded by Mr. Strickland. The Board voted 5-2, in favor of the motion. (Ayes: Pinto, Parmele, Shell, Strickland, Pearce. Nays: Huffman, Turner.)

Chair Pinto moved to grant Variance #2, a 3.3 ft. variance into the 10-foot interior setback adjacent to the western lot line. He incorporated by reference the entire motion made with regard to the eastern lot line variance, seconded by Mr. Strickland. The Board voted 5-2 in favor of the motion. (Ayes: Pinto, Parmele, Shell, Strickland, Pearce. Nays: Huffman, Turner.)

- (c) BOA-09-37: **9213 WEST MARKET STREET** Roscoe Gray III requests a variance from the minimum street frontage requirement. *Variance:* An existing lot has zero (0) feet of street frontage when 45 feet is required. Table 30-4-6-1 and Section 30-4-10.2, Present Zoning-RS-12, BS-720, Cross Street-South Bunker Hill Road. **(GRANTED)**

Rawls Howard stated that the applicant is requesting a variance from the minimum street frontage requirement for a lot that has zero feet of street frontage when 45 feet is required. The property is located south of West Market Street and east of South Bunker Hill Road on zoning map block sheet 720. The property was annexed into the city in 2008. The applicant is requesting a variance from the minimum street frontage requirement. The property was originally recorded in Guilford County in 1934 under the Roscoe W. Gray property. The plat consisted of 3 tracts. It appears the property was accessed by a gravel drive from the South Bunker Hill Road right-of-way. This lot is land-locked. The only measure to gain access is through the existing gravel drive. The owner of the existing access easement has submitted a notarized letter giving the applicant permission to use the access for utilities and for ingress/egress purposes. If the variance is granted, the applicant is aware that he will need to move forward with the Planning Department's requirements to legally record the easement. There is a railroad easement located to the north of this lot and a small portion of the railroad easement is located on the applicant's lot. The drawing reflects that no portion of the dwelling will encroach into the railroad easement.

The applicant has also submitted copies of well and septic permits for the dwelling. The lot does contain sufficient area and width for residential development, except that it does not have the minimum street frontage. Section 30-4-10.2 states *Vehicular Access to Public Street Required*: Every zone lot shall abut and have direct vehicular access to a publicly maintained street, except as provided below in this Section. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-12 will typically be 3.0 units per acre or less.

*Footnote** This lot has been re-addressed to better reflect the actual location should emergency services need to locate it. The new address is **207-A Bunker Hill Rd.** The existing tax parcel numbers will remain the same, but the next tax bill may show the new lot address as indicated.

Chair Pinto asked if there was anyone wishing to speak in support of the request.

Roscoe Gray, 9200 W. Market St., stated that the property was annexed about a year ago, and found that NCDOT was widening Market St. He found from staff that the lot was landlocked due to the street frontage requirement, and that there was no recorded access to the lot. He was granted an easement from the adjoining property owner. He presented the notarized agreement to the Board. He plans to build a house on the property for his residence. The access will not limit safety access to the lot.

Chair Pinto asked if the access is off of Bunker Hill Rd. Mr. Gray said that it was there. Ms. Averett stated that the gravel drive was not a dedicated right-of-way, and the easement would need to be recorded as a legally recorded easement to allow access.

Mr. Pearce asked if the City was comfortable with the fact that the easement gives the lot adequate access. Mr. Howard stated that there was adequate access with the easement when legally recorded. Ms. Averett stated that emergency services had no issue with access so long as it was recorded with the new Bunker Hill Rd. address.

No one spoke in opposition to the requests.

After a short discussion, Mr. Parmele moved that the facts, as submitted by the zoning administrator, be incorporated into the record by reference, and that zoning enforcement officer be overruled, and the variance granted based on the following findings: there are practical difficulties or unnecessary hardships that result from the carrying out of the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he can not make a reasonable use of the property because the property has no access. The property is landlocked, and there is no reasonable way to approach the lot unless the variance is granted. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because of the 1930s layout and design, and through the years, no accurate recordings were made to allow access. The hardship results from the application of this ordinance to the property because the annexation makes the property subject to the ordinance. The hardship is not the result of the applicant's own actions. The variance is in harmony with the general purpose and intent of the ordinance, and preserves its spirit because this access has been in existence since the 1930s and this confirms that access. The granting of the variance assures the public safety and welfare and does substantial justice by providing access to the lot. Chair Pinto made a friendly amendment to the motion, that the variance be conditional to the recording of a legally

recorded easement. The motion was seconded by Ms. Huffman. The Board voted unanimously, 7-0, in favor of the motion.

Chair Pinto put the meeting into a five minute recess at 4:04 pm. The meeting reconvened at 4:10 pm.

- (d) BOA-09-38: **600 NORTH ELM STREET** Douglas Jones requests a variance from the minimum number of required off-street parking spaces. *Variance:* A change in use from a convenience store to a restaurant will require fifteen (15) spaces when only four (4) spaces can be provided; therefore a reduction of eleven (11) spaces is requested. Table 30-5-3-1, Present Zoning-GB, BS-2, Cross Street-East Fisher Avenue.
(GRANTED)

Rawls Howard stated that Douglas Jones requests a variance from the minimum number of required parking spaces. The applicant is proposing to change a use from a convenience store to a restaurant which will require 11 additional parking spaces. The applicant is requesting a variance to be allowed to provide 4 parking spaces when 15 spaces are required. The property is located at the northeastern intersection of North Elm Street and East Fisher Avenue on zoning map block sheet 2 and is zoned GB. The property contains a building that was last used as a convenience store. It is now vacant and the owner is proposing to open a pizza restaurant. The change in use from a retail store to a restaurant increases the minimum number of parking spaces. The building is approximately 1,500 square feet and the previous store required 5 spaces. The restaurant will require 15 spaces. The lot is a corner lot that is adjacent to two major thoroughfares, North Elm Street and East Fisher Avenue. The applicant is proposing to close one of the driveways adjacent to the East Fisher Avenue. The other driveway on East Fisher Avenue serves as an entrance to the rear parking lot for Fisher's Grill which is adjacent to this lot. Both lots are under the same ownership. The applicant has made mention that the business serves the nearby neighborhood and that many of his patrons are pedestrian oriented. The existing parking spaces are located in front of the building adjacent to the North Elm Street right-of-way. The GB, General Business District is primarily intended to accommodate a wide range of retail, service, and office uses. The districts typically located along thoroughfares in areas which have developed with minimal front setbacks.

Chair Pinto asked if there was anyone wishing to speak in support of the request.

Wayland Cook, 2615 Trosper Rd., counsel to the applicant, presented a handout to the Board. He stated that the property has had several uses, including most recently a convenience store, but none has survived very long recently. The proposed use is a restaurant with delivery. He expects a large part of the business to include delivery and walk-in traffic. As requested by GDOT one entrance to the site will be closed for safety reasons. A petition of support from the community was presented in the packet. There are 103 public parking spaces within 200 yd. of the site. The business would provide 12-15 jobs on various shifts. If the proposed site was one block to the south, there would be no parking requirements under the Central Business District zoning.

Mr. Pearce asked where the delivery drivers and employees would park. Mr. Cook stated that the most reasonable place would be on the street behind the site along Fisher Ave.

Mr. Strickland asked if the 103 public parking spaces included any of the parking at First Presbyterian. He stated that it did not.

Mr. Turner asked what percent he expected the foot traffic to include. Mr. Cook stated that, Fishers Grille, next door, experienced about 30% walking customers, and the same, or more would be expected here. Mr. Turner asked how many seats would be in the restaurant. Mr. Cook stated the plan is to have seating for 48.

Mr. Shell asked why the entrance close to the intersection was going to be closed. Mr. Cook said that the issue was safety at the intersection, and to discourage driving the wrong way on Fisher Ave. to reach the entrance that is close to the intersection. Ms. Averett stated another reason was to prevent people from backing out into the street.

Mr. Parmele asked how far the site was from the CBD zoning. Mr. Howard stated that the distance was equivalent to one block, about 600 ft.

No one spoke in opposition to the request.

Mr. Shell stated that while this is not in the CBD, the proximity to the Downtown area would lead patrons to expect to have issues with parking, or knowing they will not be able to park right out front.

Mr. Pearce stated that the petition should not be considered given that it can not be proven to be representative of the Fisher Park community. He asked staff if a rezoning to CBD might be a better means of reaching the applicant's goals. Mr. Howard stated that the CBD zoning cannot be spot zoned, and therefore rezoning to CBD at this site would not be possible.

Mr. Pinto stated that the evidence shows that other businesses have failed, and there may be no reasonable use of the property if the ordinance is enforced.

After discussion, Mr. Parmele moved that the facts, as submitted by the zoning administrator, be incorporated into the record by reference, and that zoning enforcement officer be overruled, and the variance granted based on the following findings: there are practical difficulties or unnecessary hardships that result from the carrying out of the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he can not make a reasonable use of the property because as history has shown, multiple businesses have failed, and the application of maintaining the required parking spaces would not be feasible for the anticipated use. Thus, the property would continue to have no reasonable use. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because of the unique location near the CBD and the suburban residential area, requiring suburban parking requirements that are not necessarily applicable to a CBD location. The hardship results from the application of this ordinance to the property because the lot is uniquely situated on a corner, which is very small, and will not accommodate 15 parking spaces. The hardship is not the result of the applicant's own actions because he is endeavoring to create a desirable business environment in this location, and has no ability to expand or modify the plan to incorporate the needed parking. The variance is in harmony with the general purpose and intent of the ordinance, and preserves its spirit because the location of the business and lot is conducive to walk and bicycle traffic and community environment that will allow flexibility for parking. The granting of the variance assures the public safety and welfare, and does substantial justice

because it is in keeping with the community environment of walking and accessibility. The motion was seconded by Mr. Turner. The Board voted in favor of the motion 5-2. (Ayes: Parmele, Pinto, Shell, Huffman, Turner. Nays: Strickland, Pearce.)

SPECIAL EXCEPTION

- (a) BOA-09-39: **1605 LORD FOXLEY COURT** Ronald Powell requests a Special Exception as authorized by Section 30-5-2.37(B) to allow a separation of 960 feet from one family care home (6 or less persons) to another family care home (6 or less persons) when 1,320 feet is required. Present Zoning-RS-7, BS-31, Cross Street-Sir Walter Road. **(DENIED)**

Rawls Howard stated that the applicant is proposing to locate a family care home 960 feet from an existing family care which is located at 1209 Westhampton Drive. The minimum spacing separation requirement is 1,320 feet. It is 360 feet too close. The lot is located at the northwestern intersection of Lord Foxley Drive and Lord Foxley Court north of Phillips Avenue on zoning map block sheet 31. It is zoned RS-9 (Residential Single Family-9). The applicant is proposing to locate a family care home (6 or less persons) at 1605 Lord Foxley Drive. It is approximately 960 feet from an existing family care home, which is located at 1209 Westhampton Drive. The homes are required to be separated by a minimum radius of $\frac{1}{4}$ mile, which is 1,320 linear feet. Business license records reflect that the family care home located at 1209 Westhampton Drive is in current operation and required renewals are in compliance. The homes are located in different neighborhoods separated by other homes and streets. The RS-9, Residential Single-Family District is primarily intended to accommodate moderate to high density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-9 will typically be 4.0 units per acre or less.

Chair Pinto asked if there was anyone wishing to speak in support of the request.

Ronald Powell, 5204 Winterale Ct., McLeansville, NC, stated that the facility would be a disabled adult care facility, for elderly adults. The business has the opportunity to provide employment to 4 to 5 individuals, and care for up to 4 disabled adults. There would be two vehicles parked there at once, in compliance with existing neighborhood requirements. He stated that there was no foot-traffic accessibility from the other neighborhood, where the other family care home exists. Mr. Powell stated that the exception is to allow for a difference of 360 ft. from the required spacing, as the crow flies. However, the distance by car is about 1.2 miles. The home has been approved for family care in the past.

Angela Revas, 8 Lake Point Ct., stated that the home will be a 24-hour supervised facility, with 1 to 2 employees per shift.

Chair Pinto asked how many vehicles were anticipated at the home on a regular basis. Mr. Powell stated there would be two, for the employees. The residents will not have vehicles. Chair Pinto stated that, generally, when these exceptions were granted in the past it was due to a significant dividing barrier, such as a highway, a park, or a tree line. Mr. Powell stated there was no foot path to the other neighborhood. Chair Pinto asked if they had spoken to the neighbors about the proposed use. Mr. Powell stated that he had only discussed the issue with

one neighbor. Mr. Shell asked if the property from the other neighborhood is visible from the backyard. Mr. Powell said that it was not because of a wood line between the neighborhoods.

Chair Pinto asked if there was anyone who wished to speak in opposition to the request.

Lewis Smith, 1601 Lord Foxley Dr., stated that when the applicant lived in the neighborhood the property was kept reasonable well, but after he moved the property was not kept up properly, and fears the upkeep will again be less than he expects. He also believes allowing this commercial purpose will decrease the property values. James Johnson, 1603 Lord Foxley Dr., also feared that the upkeep of the yard is also a fear given the use and the fact the owner will not be living there. George Wood, 1603 Lord Foxley Dr., stated that he feared allowing this special exception would degrade the integrity of the neighborhood, and family care homes decrease the property value of the neighborhood.

Mr. Parmele stated that in most of the scenarios where an exception is allowed there is a significant barrier, and there does not appear to be such a barrier in this case. Also several Board members discussed the fact that there is significant neighborhood opposition.

After a short discussion Mr. Pearce moved that the facts as submitted by the zoning administrator be admitted to the record by reference, and the zoning enforcement officer be upheld and the special exception be denied based on the following: the special exception is not in harmony with general purpose and does not preserve its spirit because the purpose of the ordinance is to provide that this type of housing is only used in certain proximity to other similar housing uses. There is no major dividing line in between the existing home and the proposed home. The granting of the special exception does not assure the public safety and welfare, and does not do substantial justice because it is contrary to the intent of the ordinance. The motion was seconded by Mr. Turner. The Board voted unanimously, 7-0, in favor of the motion.

OTHER BUSINESS

- 1. Time limitations on rehearing policy**
- 2. Changing the monthly meeting time**

Mr. Howard stated that staff had prepared the inserts for the Rules and Procedures to indicate both the new meeting time of 5:30 pm and the 90-day rehearing timeline. The Chair is required to sign these, because they are amended rules and procedures. Staff will send a signature page to the Chair if approved.

Mr. Howard stated that on 5-A the regular meeting time has been changed from 2:00 pm to 5:30 pm. On the second page under E., rehearsals within 90-days of the Board's original decision. Mr. Pearce asked if the 90-day period starts when the Board makes the decision or when the decision is actually mailed. Staff responded that the time would begin when the Board made the decision.

Mr. Strickland stated that according to the minutes from last month, the decision between 4:00 pm and 5:30 pm would be brought to the Board at this meeting. Mr. Howard stated that the general agreement of the Board was for a 5:30 meeting time.

Mr. Pearce moved to change the regular meeting time from 2:00 pm to 5:30 pm, seconded by Mr. Shell. The Board voted in favor of the motion 4-3. (Ayes: Pearce, Shell, Pinto, Huffman. Nays: Turner, Parmele, Strickland.)

Mr. Pearce moved to adopt the rehearing section as drafted, seconded by Mr. Parmele. The Board voted unanimously in favor of the motion.

Mr. Clark stated that the legislature enacted a statute governing quasi-judicial procedures, codifying most of the case law, effective October 1st. Staff will present copies of the statute to the Board members.

ABSENCES:

The absence of Mr. Brewington and Ms. Trexler were acknowledged.

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ADJOURN:

There being no further business before the Board, the meeting adjourned at 5:41 p.m.

Respectfully submitted,

Rick Pinto, Chair
Greensboro Board of Adjustment

RP/jd